

1 Michael J. Bettinger, SBN 122196  
mbettinger@sidley.com

2 Ezekiel L. Rauscher, SBN 269141  
erauscher@sidley.com

3 SIDLEY AUSTIN LLP

4 555 California Street, Suite 2000

San Francisco, California 94104

5 Telephone: +1 415 772-1200;

6 Facsimile: +1 415 772-7400

7 Attorneys for THE REALREAL, INC.

8  
9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT CALIFORNIA

11 SAN FRANCISCO DIVISION

12 ZEE APPAREL INC. d/b/a SHOP UNDER,  
13 a corporation incorporated under the laws of  
the Province of Quebec, Canada

14 Plaintiff/Counterdefendant,

15 vs.

16 THE REALREAL, INC.,  
17 a Delaware corporation,

18 Defendant/Counterclaimant.

) Case No. 3:16-cv-00755-HSG

)  
) **DECLARATION OF EZEKIEL**  
) **RAUSCHER IN SUPPORT OF THE**  
) **REALREAL, INC.'S MOTION FOR**  
) **SUMMARY JUDGMENT**

1 I, Ezekiel Rauscher, declare under penalty of perjury under the laws of the United States of  
2 America that the following is true and correct:

3 I am an attorney at Sidley Austin LLP, counsel for Defendant and Counterclaimant The  
4 RealReal, Inc. ("The RealReal") in this matter, and am a member in good standing of the State Bar  
5 of California and of the Bar of this Court. I am over the age of 18 and am qualified to make this  
6 declaration. The facts stated herein are true of my own personal knowledge and, if called as a  
7 witness, I could and would testify competently thereto. I am submitting this declaration in support  
8 of The RealReal's Motion for Summary Judgment.

9 1. Attached hereto as **Exhibit A** are true and correct excerpts from the transcript of the  
10 deposition of Sean Erez, taken October 19, 2016. Zee Apparel designated Exhibit 1 as "HIGHLY  
11 CONFIDENTIAL – ATTORNEYS EYES ONLY."

12 2. Attached hereto as **Exhibit B** is a true and correct of The RealReal's Consignment  
13 Terms, produced with Bates numbers Zee\_0510-14.

14 3. Attached hereto as **Exhibit C** is a true and correct copy of The RealReal's  
15 Responses to Zee Apparel's Third Set of Interrogatories, dated October 7, 2016. The RealReal  
16 designated Exhibit C as "HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY."

17 4. Attached hereto as **Exhibit D** is a true and correct copy of a letter from counsel for  
18 Chanel, produced with Bates numbers Zee\_0706-30 . Zee Apparel designated Exhibit D as  
19 "HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY."

20 5. Attached hereto as **Exhibit E** are true and correct copy excerpts from the transcript  
21 of the deposition of John Maltbie, taken October 21, 2016. Zee Apparel and Louis Vuitton  
22 designated Exhibit E as "HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY."

23 6. Attached hereto as **Exhibit F** is a true and correct copy of redacted emails to  
24 info@shopunder.com, dated between January 6, 2016 through 25, 2016, produced with Bates  
25 numbers Zee\_0689-92. Zee Apparel designated Exhibit F as "HIGHLY CONFIDENTIAL –  
26 ATTORNEYS EYES ONLY."

27 7. Attached hereto as **Exhibit G** is a true and correct copy of an email chain between  
28 Sean Erez and Carim Karam, dated March 5, 2015, produced with Bates numbers TRR-

1 ZAI\_00000155-157. [Erez Depo. Ex. 5.]

2 8. Attached hereto as **Exhibit H** is a true and correct copy of an email chain between  
3 Sean Erez and Carine Karam, dated December 2, 2015, produced with Bates numbers Zee\_0562-  
4 64. [Erez Depo. Ex. 7.]

5 9. Attached hereto as **Exhibit I** is a true and correct copy of Zee Apparel's First  
6 Supplemental Responses to The RealReal's Interrogatories Number, 1, 2, 4, 5 and 8, dated  
7 September 16, 2016. Zee Apparel designated Exhibit I as "CONFIDENTIAL – except that Zee  
8 Apparel's Response and First Supplemental Response to Interrogatory No. 4 is designated by Zee  
9 Apparel as HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

10 10. Attached hereto as **Exhibit J** is a true and correct copy of subpoenaed FedEx  
11 business records, including labels and commercial invoices, produced with Bates numbers  
12 FEDEX\_000001-23.

13 11. Attached hereto as **Exhibit K** is a true and correct copy of an email from Sean Erez  
14 to Carine Karam forwarding FedEx tracking numbers, dated November 3, 2015, produced with  
15 Bates numbers TRR-ZAI\_00000890.

16 12. Attached hereto as **Exhibit L** is a true and correct copy of an email from Sean Erez  
17 to Carine Karam forwarding FedEx tracking numbers, dated November 12, 2015, produced with  
18 Bates numbers TRR-ZAI\_00000971.

19 13. Attached hereto as **Exhibit M** is a true and correct copy of an email from Carine  
20 Karam from Sean Erez including FedEx tracking numbers, dated November 18, 2005, produced  
21 with Bates numbers TRR-ZAI\_00001153.

22 14. Attached hereto as **Exhibit N** is a true and correct copy of an email Sean Erez to  
23 Carine Karam forwarding FedEx tracking numbers, dated November 25, 2015, produced with  
24 Bates numbers TRR-ZAI\_00001306.

25 15. Attached hereto as **Exhibit O** is a true and correct copy of an email chain from  
26 Howard Levy to Sean Erez and Carine Karam including FedEx tracking numbers, dated December  
27 4, 2015, produced with Bates numbers TRR-ZAI\_00001466-67.

28 16. Attached hereto as **Exhibit P** is a true and correct copy of Zee Apparel's Initial

1 Disclosures, dated May 27, 2016.

2 17. Attached hereto as **Exhibit Q** is a true and correct copy of an email from Carine  
3 Karam to Sean Erez, dated December 2, 2015, produced with Bates numbers TRR-ZAI\_00001335.  
4 [Erez Depo. Ex. 6.]

5 18. Attached hereto as **Exhibit R** is a true and correct copy of an email chain between  
6 Graham Wetzberger, Kenneth Klug and Dana DuFrane, dated December 8, 2015, produced with  
7 Bates numbers TRR-ZAI\_00001625-28. The RealReal designated Exhibit R as “HIGHLY  
8 CONFIDENTIAL – ATTORNEYS EYES ONLY.”

9 19. Attached hereto as **Exhibit S** is a true and correct copy of an Affidavit of  
10 Authenticity for John Maltbie, dated February 10, 2016, produced with Bates numbers TRR-  
11 ZAI\_00001991. The RealReal designated Exhibit S as “CONFIDENTIAL.”

12 20. Attached hereto as **Exhibit T** is a true and correct copy of an email chain between  
13 John Maltbie, Dana DuFrane, Graham Wetzberger and Tamara Taylor, dated February 10, 2016,  
14 produced with Bates numbers TRR-ZAI\_00001977-93. The RealReal designated Exhibit T as  
15 “HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY.”

16 21. Attached hereto as **Exhibit U** is a true and correct copy of an email chain between  
17 Sean Erez and Carine Karam, dated November 6, 2015, produced with Bates numbers TRR-  
18 ZAI\_00000910-11. [Erez Depo. Ex. 521.]

19 22. Attached hereto as **Exhibit V** is a true and correct copy of text messages between  
20 Sean Erez and Carine Karam, dated between December 22, 2014 through December 8, 2015,  
21 produced with Bates numbers Zee\_0439-96. Zee Apparel designated Exhibit V as  
22 “CONFIDENTIAL.” [Erez Depo. Ex. 533.]

23 23. Attached hereto as **Exhibit W** is a true and correct copy of Zee Apparel’s  
24 Responses and Objections to The RealReal’s First Set of Requests for Production of Documents  
25 and Things, dated June 9, 2016.

26 24. Attached hereto as **Exhibit X** is a true and correct copy of Zee Apparel’s Answers  
27 and Objections to The RealReal’s First Set of Interrogatories, dated July 1, 2016. Zee Apparel  
28 designated Exhibit X as “HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY.”

25. Attached hereto as **Exhibit Y** is a true and correct copy of The RealReal's Notice of Deposition of Zee Apparel Pursuant to Rule (30)(b)(6), dated October 11, 2016. [Erez Depo. Ex. 501.]

26. Attached hereto as **Exhibit Z** is a true and correct copy of an email chain between Dana DuFrane and Sean Erez, dated December 10, 2015, produced with Bates numbers TRR-ZAI\_00001629.

27. Attached hereto as **Exhibit AA** is a true and correct copy of an email chain between Sean Erez and Carine Karam, dated December 8, 2015, produced with Bates numbers TRR-ZAI\_00001589. [Erez Depo. Ex. 544.]

28. Attached hereto as **Exhibit BB** is a true and correct copy an email chain between Sean Erez and Carine Karam, dated December 8, 2015, produced with Bates numbers TRR-ZAI\_00001585. [Erez Depo. Ex. 547.]

29. Attached hereto as **Exhibit CC** is a true and correct copy of an email between Sean Erez and Mike Alvarado, dated December 9, 2015, produced with Bates numbers Zee\_0591-92. [Erez Depo. Ex. 535.]

30. Attached hereto as **Exhibit DD** is a true and correct copy of "Schlepping toward ecstasy," from the New York Post webpage, <http://nypost.com/2010/05/23/schleppingtowardecstasy/>, accessed December 7, 2016.

31. Attached hereto as **Exhibit EE** is a true and correct copy of "Jury in cocaine case didn't know accused's past," from thestar.com webpage, [https://www.thestar.com/news/gta/2008/09/30/jury\\_in\\_cocaine\\_case\\_didnt\\_know\\_accuseds\\_past.html](https://www.thestar.com/news/gta/2008/09/30/jury_in_cocaine_case_didnt_know_accuseds_past.html), accessed December 7, 2016.

32. Attached hereto as **Exhibit FF** is a true and correct copy of invoices billed to Zee Apparel produced with Bates numbers Zee\_0545-547; Zee\_0647-663; Zee\_0677. Zee Apparel designated Exhibit FF as "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY."

33. Attached hereto as **Exhibit GG** is a true and correct copy of an email chain between Zeeapparelonline and Carine Karam, dated December 8, 2015, produced with Bates numbers TRR-ZAI\_00001552-53. [Erez Depo. Ex. 534.]

34. Attached hereto as **Exhibit HH** is a true and correct copy of credit card transactions for goods The RealReal returned to Zee Apparel, produced with Bates numbers Zee\_0664-75. Zee Apparel designated Exhibit HH as “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY.” [Erez Depo. Ex. 506.]

35. Attached hereto as **Exhibit II** is a true and correct copy of credit card transactions for goods The RealReal returned to Zee Apparel, produced with Bates number Zee\_0688. Zee Apparel designated Exhibit II as “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY.” [Erez Depo. Ex. 507.]

36. Attached hereto as **Exhibit JJ** is a true and correct copy of a invoices billed to Zee Apparel, produced with Bates number Zee\_0548-50, Zee\_0638-46, Zee\_0676. Zee Apparel designated Exhibit JJ as “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY.” [Erez Depo. Ex. 513.]

37. Attached hereto as **Exhibit KK** is a true and correct copy of an email chain between Sean Erez and Carine Karam, dated November 10, 2015, produced with Bates numbers TRR-ZAI\_00000916-919. [Erez Depo. Ex. 517.]

38. Attached hereto as **Exhibit LL** is a true and correct copy of The RealReal Consignment Sales Statements for Shop Under for March 2015 – November 2015, produced with Bates numbers Zee\_0528-540.

39. Attached hereto as **Exhibit MM** is a true and correct copy of Zee Apparel’s Responses and Objections to The RealReal’s Second Set of Requests for Production of Documents and Things, dated October 6, 2016.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: December 8, 2016

/s/ Ezekiel Rauscher  
Ezekiel Rauscher